

## CIVIL COVER SHEET

## APPENDIX H

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFF TAMARA SMITH

(b) County of Residence of First Listed Plaintiff Philadelphia  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) Cary L. Flitter, Esq. and Theodore E. Lorenz, Esq., Lundy, Flitter, Beldecos & Berger, P.C., 450 N. Narberth Avenue, Narberth, PA 19072, (610) 822-0770

DEFENDANTS MIDLAND CREDIT MANAGEMENT, INC. and GREG MORRIS, ESQ. and PATENAUE & FELIX, A.P.C.

County of Residence of First Listed Defendant Unknown  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |  |  |                            |                            |
|--|--|----------------------------|----------------------------|
| PTF  | DEF  | PTF                        | DEF                        |
| Citizen of This State <input type="checkbox"/> 1                   | <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State <input type="checkbox"/> 2                | <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 | <input type="checkbox"/> 3 Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. § 1692

Brief description of cause:

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint  
JURY DEMAND: ☒ Yes ☐ No.

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**APPENDIX I**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

TAMARA SMITH	:	
	:	CIVIL ACTION
V.	:	
	:	
MIDLAND CREDIT MANAGEMENT,	:	
INC. and GREG MORRIS, ESQ. and	:	NO.
PATENAUE & FELIX, A.P.C.	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( X )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

1/24/07  
Date

*T. J. J.*  
Attorney at Law

PLAINTIFF  
Attorney for

610-668-0011  
Telephone  
(Civ.660) 10/02

610-667-0552  
Fax Number

LORENZ@LFBB.COM  
E-Mail Address

## UNITED STATES DISTRICT COURT

APPENDIX F

**FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM** to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1740 Georges Lane, 1<sup>st</sup> Floor, Philadelphia, PA 19131

Address of Defendant: 8875 Aero Drive, San Diego, CA 92123 and 213 East Main Street., Carnegie, PA 15106

Place of Accident, Incident or Transaction: 1740 Georges Lane, 1<sup>st</sup> Floor, Philadelphia, PA 19131 (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge: \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes ☐ No ☐
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes ☐ No ☐
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes ☐ No ☐

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

**A. Federal Question Cases:**

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases  
(Please specify) 15 U.S.C. §1692

**B. Diversity Jurisdiction Cases:**

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability (Asbestos)
9. ☐ All other Diversity Cases  
(Please specify)

**ARBITRATION CERTIFICATION**

(Check appropriate Category)

I, \_\_\_\_\_, counsel of record do hereby certify:  
☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;  
☐ Relief other than monetary damages is sought

DATE: \_\_\_\_\_ Attorney-at-Law \_\_\_\_\_ Attorney I.D. \_\_\_\_\_

**NOTE:** A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 1/24/07  
 CIV.609 (4/03) \_\_\_\_\_  
 Attorney-at-Law

67795  
 Attorney I.D.

c:\smith-midland\pleadings\complaint smith- midland\patenaude

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TAMARA SMITH  
1740 Georges Lane, 1<sup>st</sup> Floor  
Philadelphia, PA 19131

Plaintiff

vs.

MIDLAND CREDIT MANAGEMENT, INC.  
8875 Aero Drive  
San Diego, CA 92123  
AND

GREG MORRIS, ESQUIRE  
213 East Main Street  
Carnegie, PA 15106  
AND

PATENAUDE & FELIX, A.P.C.  
213 East Main Street  
Carnegie, PA 15106

Defendants

CIVIL ACTION

NO.

**COMPLAINT**

**I. INTRODUCTION**

1. This is an action for damages brought by a consumer pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692 ("FDCPA").

2. The FDCPA prohibits debt collectors from engaging in deceptive and unfair practices in the collection of a consumer debt.

3. The FDCPA is a strict liability statute.

**II. JURISDICTION**

4. Jurisdiction arises under 15 U.S.C. §1692k and 28 U.S.C. §1337.

### **III. PARTIES**

5. Plaintiff is Tamara Smith, a consumer who resides in Philadelphia, Pennsylvania at the address captioned.

6. Defendant Midland Credit Management, Inc. is a foreign corporation with a mailing address as captioned (herein referred to as "Midland").

7. Defendant Patenaude & Felix, A.P.C. (herein referred to as "Patenaude") is a Pennsylvania debt collection law firm with offices for the regular transaction of business at the address captioned.

8. Defendant Gregg Morris, Esq., (hereinafter "Morris") is an attorney for Patenaude.

9. Midland, Morris, and Patenaude, are collectively referred to as "defendants".

10. Each defendant regularly engages in the collection of consumer debts by use of the mails and telephone.

11. Each defendant regularly attempts to collect consumer debts alleged to be due another.

12. Each defendant is a "debt collector" as that term is contemplated in the FDCPA, 15 U.S.C. §1692a(6).

### **IV. STATEMENT OF CLAIM**

13. On May 24, 2006, Smith filed suit against Patenaude in the United States District Court for the Eastern District of Pennsylvania for violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692. That suit is styled as *Tamara Smith v. Patenaude & Felix*,

*A.P.C.*, Civil Action No. 06-CV-2203(ER).<sup>1</sup> At all times relevant hereto, Morris represented Patenaude in that action.

14. Two weeks later, on June 7, 2006 and with no payment demand, Morris and Patenaude, ostensibly on behalf of Midland, filed a state court complaint against plaintiff on two accounts alleged due, including the account on which Patenaude sent the collection letter in question in the federal action. The state court action is styled as *Midland Credit Management Corp. v. Tamara Smith*, Phila. C.C.P. June Term 2006, No. 875. (“Collection suit”)

15. Upon information and belief, the state court complaint was filed in retaliation for Ms. Smith asserting her rights under the FDCPA in the federal court case.

16. In the collection suit, Ms. Smith filed an Answer disputing and denying the accounts alleged due.

17. Ms. Smith served discovery requests, including a notice to take the deposition of Midland, in the collection suit.

18. On December 14, 2006, defendants moved before the Court of Common Pleas for a protective order to avoid having Midland appear for its deposition. The law firm of Maurice & Needleman appeared on behalf of the defendants.

19. On December 14, 2006, after extensive oral argument, the state court denied the motion for a protective order and directed Midland to appear at Smith’s counsel’s office within 10 days for its deposition. A copy of the State Court Order is appended as Exhibit “A”.

20. Midland’s deposition was noticed for December 22, 2006 at Smith’s counsel’s office. Midland failed and refused to show up.

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<sup>1</sup> Morris and Patenaude filed a motion to dismiss the complaint. That motion – after oral argument - was denied by the Honorable Eduardo C. Robreno on December 18, 2006. (Doc No. 12).

21. Defendant Morris, ostensibly on behalf of Patenaude & Midland, wrote to Smith's counsel on December 20, 2006 and December 21, 2006 (Exhibits "B & C" hereto)

22. Defendants, instead of appearing for the court ordered deposition of Midland, filed a discontinuance without prejudice, of the state court action.

23. Defendants discontinued without prejudice the state court action to side-step its court ordered deposition, but yet left open the option of re-filing the complaint against plaintiff.

24. Morris' letters dated December 20, 2006 and December 21, 2006 make clear defendants intention to re-file the state court case against Ms. Smith at some future time while side-stepping its court ordered deposition.

25. Defendants' collection conduct is harassing, abusive, deceptive, and unfair, in violation of the FDCPA.

26. Section 1692d of the FDCPA prohibits a debt collector from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.

27. Section 1692e of the FDCPA prohibits a debt collector from using false, deceptive, or misleading means in an attempt to collect an alleged debt.

28. Section 1692f of the FDCPA prohibits a debt collector from using unfair or unconscionable means to collect or attempt to collect a debt.

29. The defendants have engaged in harassing, abusive, deceptive, and unfair conduct in their attempt to collect the accounts alleged due by plaintiff.

30. The state court complaint was filed against Ms. Smith in retaliation for a prior federal suit commenced against Patenaude.

31. The defendants had no intention of litigating the state court action and Midland did not direct it. It was filed simply to harass and abuse Ms. Smith for filing the federal suit as evidenced by defendants' conduct in the state case.

32. Defendants sidestepped the state court discovery order by discontinuing the suit without prejudice, but have threatened to re-file the action and start anew. See Exhibits B and C hereto.

33. As a result of defendants conduct, plaintiff has been subjected to defendants' harassing and abusive conduct and has incurred costs and expense in defending against the state court action.

**COUNT I - FAIR DEBT COLLECTION PRACTICES ACT**  
**(V. MIDLAND CREDIT MANAGEMENT, INC.)**

34. Plaintiff repeats the allegations contained above as if the same were here set forth at length.

35. The conduct of Midland Credit Management, Inc. violated the FDCPA in the following ways:

(a) by engaging in conduct the nature consequence of which is to harass, oppress, or abuse plaintiff in connection with a collection of a debt alleged due, in violation of 15 U.S.C. §1692d.

(b) by engaging in false, deceptive, or misleading conduct in the connection with the collection of any debt, in violation of 15 U.S.C. §1692e and §1692e(10).

(c) by using unfair or unconscionable means to collect or attempt to collect a debt alleged due, in violation of 15 U.S.C. §1692f.

**WHEREFORE**, Plaintiff Tamara Smith demands judgment against defendant for:

(a) Damages;



- (b) Attorney's fees and costs; and
- (c) Such other and further relief as the Court shall deem just and proper.

**COUNT II - FAIR DEBT COLLECTION PRACTICES ACT**  
**(V. GREG MORRIS, ESQUIRE)**

36. Plaintiff repeats the allegations contained above as if the same were here set forth at length.

37. Greg Morris' conduct violated the FDCPA in the following ways:

- (a) by engaging in conduct the nature consequence of which is to harass, oppress, or abuse plaintiff in connection with a collection of a debt alleged due, in violation of 15 U.S.C. §1692d.

- (b) by engaging in false, deceptive, or misleading conduct in the connection with the collection of any debt, in violation of 15 U.S.C. §1692e and §1692e(10).

- (c) by using unfair or unconscionable means to collect or attempt to collect a debt alleged due, in violation of 15 U.S.C. §1692f.

**WHEREFORE**, Plaintiff Tamara Smith demands judgment against defendant for:

- (a) Damages;
- (b) Attorney's fees and costs; and
- (c) Such other and further relief as the Court shall deem just and proper.

**COUNT III - FAIR DEBT COLLECTION PRACTICES ACT**  
**(V. PATENAUDE & FELIX, A.P.C.)**

38. Plaintiff repeats the allegations contained above as if the same were here set forth at length.

39. Patenaude & Felix's conduct violated the FDCPA in the following ways:

- (a) by engaging in conduct the nature consequence of which is to harass,

oppress, or abuse plaintiff in connection with a collection of a debt alleged due, in violation of 15 U.S.C. §1692d.

(b) by engaging in false, deceptive, or misleading conduct in the connection with the collection of any debt, in violation of 15 U.S.C. §1692e and §1692e(10).

(c) by using unfair or unconscionable means to collect or attempt to collect a debt alleged due, in violation of 15 U.S.C. §1692f.

**WHEREFORE**, Plaintiff Tamara Smith demands judgment against defendant for:

- (a) Damages;
- (b) Attorney's fees and costs; and
- (c) Such other and further relief as the Court shall deem just and proper.

**V. DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury as to all issues so triable.

Respectfully submitted:

Date: 01/23/07

/s/ Theodore E. Lorenz (TEL5114)

CARY L. FLITTER  
THEODORE E. LORENZ  
Attorneys for Plaintiff

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